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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/032,442	12/21/2001	Kenneth J. Muderlak	8026-1036	6103
757	7590	12/29/2004	EXAMINER	
BRINKS HOFER GILSON & LIONE			KEASEL, ERIC S	
P.O. BOX 10395			ART UNIT	
CHICAGO, IL 60610			PAPER NUMBER	
			3754	

DATE MAILED: 12/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/032,442	Applicant(s) MUDERLAK, KENNETH J.	
	Examiner Eric Keasel	Art Unit 3754	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Sep 2, 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 30, 2004 has been entered.

Drawings

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "81" has been used to designate both a plate and a flange. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 28-33 are rejected under 35 U.S.C. 102(b) as being anticipated by Muderlak et al. (WO 97/13086).

Muderlak et al. disclose a drive mechanism for a flush lever of a sanitary fixture (see Figs. 2-7) comprising an electromechanical actuator (60) mounted on a movable plate (62), within an enclosure (52), operably engaging the flush lever (30); first (74) and second (80) bracket halves projecting from the enclosure, substantially enclosing and rigidly engaging a bushing (44) and a hexagonal nut (46) securing the flush lever to the sanitary fixture; fasteners (84) for securing the first and second bracket halves to the enclosure, and a power source (104) for the electromechanical actuator; and wherein opposing faces of the first and second bracket halves comprise a complementary topography to the bushing and nut (compare Figs. 6 and 7 of Muderlak et al. to Figs. 10 and 11 of the present application). Re claims 30 and 33, the flange (76) of the enclosure extends past the first bracket half to limit the rotation of the enclosure of the drive mechanism relative to the sanitary fixture (compare Figs. 6 and 7 of Muderlak et al. to Figs. 10 and 11 of the present application).

Response to Arguments

5. Applicant's arguments filed November 30, 2004 have been fully considered but they are not persuasive.

Applicant argues that the pin (60) of Muderlak et al. that actuates the flush handle can not be considered an electromechanical actuator because the pin itself does not convert the electrical energy to mechanical energy. However, the claim recitation is broader than applicant's interpretation. The pin is an actuator because it is the element that operably engages the flush handle to actuate the flush valve. It is also electromechanical in that an electric motor causes the movement of the pin actuator. The dictionary definition of "electromechanical" is "of, relating to, or being a mechanical process or device actuated or controlled electrically". So the pin of Muderlak et al. is electromechanical because it is a device that is actuated electrically. There is no limitation in the claims that requires an electric motor to be mounted on a movable plate.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Keasel whose telephone number is (571) 272-4929. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mar can be reached on (571) 272-4906. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3754

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Eric Keasel 27 DEC 2004
Eric Keasel
Primary Examiner
Art Unit 3754